

STATE OF HAWAII
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

October 13, 2006

FILE No.: CC HA-06-03
Existing 180-Day Exp.: November 5, 2006

**Board of Land and
Natural Resources**
State of Hawai'i
Honolulu, Hawai'i

REGARDING: Request to Extend the Processing Period in Order to Process a Contested Case Hearing for Conservation District Use Application (CDUA) HA-3269 for the Cohen Single Family Residence (SFR)

APPLICANT: Jonathan Cohen,
c/o Randy Vitousek, Esq., Cades Schutte LLP,
75-170 Hualalai Road, Suite 303, Kailua Kona, HI 96740

LANDOWNER: Aloha Properties, LLC

LOCATION: Pao'o, North Kohala, Island of Hawai'i

TMK: (3) 5-7-001:005

AREA OF PARCEL: ≈10.61 acres

USE: ≈ 5,000 square feet (ft²)

SUBZONE: Resource

BACKGROUND:

On April 19, 2006, Roy A Vitousek, III, Esq., acting on behalf of applicant Jonathan Cohen, requested a Contested Case hearing to challenge the Office of Conservation and Coastal Land's recommendation to deny Mr. Cohen's Conservation District Use Application (CDUA) HA-3269 to construct a single family residence at the above mentioned parcel in Pao'o, North Kohala, Hawai'i.

Two other intervenors subsequently petitioned to be party to the case: *Maika'i Kamakani 'O Kohala, Inc.* and *Kamakani 'O Kohala Ohana, dba Kako'o.*

TIME EXTENSION REQUEST:

On April 20, 2006, the OCCL notified Mr. Vitousek that the processing deadline for the application had been extended to August 7, 2006.

On July 14, 2006 the Board of Land and Natural Resources granted a second request to extend the processing deadline to November 5, 2006.

On July 24, 2006 a Hearing on Standing and a Pre-Hearing Conference were held in Kailua-Kona in Hawai'i County. Both intervenors were granted standing. The Evidentiary Hearing was set for Sept 20-23 in Hawi, Hawai'i County.

On September 5, 2006 OCCL received a request from Mr. Vitousek requesting a postponement of the hearing and an additional 180-day extension of the processing deadline [**Exhibit 1**].

AUTHORITY FOR GRANTING EXTENSIONS:

The authority for granting time extensions to the CDUA processing period is provided in Section 183C-6(b), HRS, which states that "...when a contested case hearing is required pursuant to Chapter 91, the one-hundred eighty days may be extended an additional ninety days at the request of the applicant. Any request for additional extensions shall be subject to the approval of the Board."

DISCUSSION:

Mr. Vitousek's request to extend the processing period an additional 180 days would make the new deadline May 4, 2007. Staff supports the applicant's request.

Staff, therefore, recommends as follows:

RECOMMENDATION:

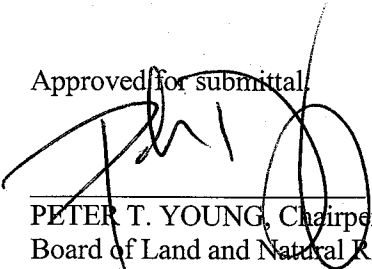
That the Board of Land and Natural Resources grant Mr. Vitousek's request to extend the processing period on CDUA HA-3269 180 days – bringing the deadline to May 4, 2007.

Respectfully submitted,



Michael Cain
Staff Planner

Approved for submittal



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

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56440

August 31, 2006

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

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AND COASTAL LANDS
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DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Re: Conservation District Use Application HA-3269
DLNR File No.: HA 06-03; TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Mr. Young and Mr. Lemmo:

The purpose of this letter is to request a 180-day extension of the decision period with respect to the above-referenced conservation district use permit application. The current expiration date is November 5, 2006. This request is contingent upon approval of Owner/Applicant Jonathan Cohen/Aloha Properties, LLC's request to continue the pending contested case hearing for a period of 90 days.

We are requesting this extension because Mr. Cohen is in the process of exploring acquisition of an alternative site to build a home and, at the same time, a sale or disposition of the Pao'o property to an entity, individual, or agency which will dedicate the property to preservation of cultural and historical resources. We note that in the Office of Conservation and Coastal Lands' submission to the Board dated April 28, 2006, a specific recommendation was made (at page 28, B.1.) that "the applicant consider more fully investigating a land exchange, conservation easement, purchase by a third party . . ." This is precisely what Mr. Cohen is attempting to accomplish.

We have requested a 90-day continuance of the contested case hearing set for September 20-21, 2006, and a 180-day extension of the decision deadline. We believe this would give Mr. Cohen an opportunity to sincerely and thoroughly explore alternative approaches and, if they are unsuccessful, give the parties and the Hearings Officer time to complete the contested case process and submit the issues to the Board for decision.

C S

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August 31, 2006
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We respectfully request your favorable attention to this request for extension. If you have questions or require additional information, please let me know.

Very truly yours,



Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:bah

cc: Louis L.C. Chang, Hearing Officer
Linda L.W. Chow, Esq.
David Kimo Frankel, Esq.
Richard Schulze, Esq.
Jonathan Cohen

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